

IN THE SUPREME OF TENNESSEE

AT NASHVILLE

**FILED**

April 21, 1999

WILSON CHANCERY  
Cecil W. Crowson  
Appellate Court Clerk

DAVID W. REED

*Plaintiff/Appellee*

vs.

WAUSAU INSURANCE COMPANY

*Defendant/Appellant*

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Hon. Charles Smith

No. 01S01-9802-CH-00038

AFFIRMED

JUDGMENT ORDER

*This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.*

*Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and*

*It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.*

*Costs will be paid by defendant/appellant, for which execution may issue if necessary.*

*IT IS SO ORDERED on April 21, 1999.*

PER CURIAM

**IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION PANEL  
AT NASHVILLE**

**DAVID W. REED** )  
 )  
 **Plaintiff/Appellee** )  
 )  
 **v.** )  
 )  
 **WAUSAU INSURANCE COMPANY** )  
 )  
 **Defendant/Appellant** )

**FILED**  
**WILSON CHANCERY**  
April 21, 1999  
Hon. C. K. Smith  
Cecil W. Crowson  
Chancellor  
Appellate Court Clerk

**No. 01S01-9802-CH-00038**

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**For the Appellant:**

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**MEMORDANDUM OPINION**

**Members of Panel:**

Adolpho A. Birch, Jr., Associate Justice  
James L. Weatherford, Senior Judge  
Joe C. Loser, Jr., Special Judge

**AFFIRMED**

**WEATHERFORD, Senior Judge**

## MEMORANDUM OPINION

This worker's compensation appeal has been referred to the Special Workers' Compensation Panel of the Supreme Court in accordance with Tenn. Code Ann. §5-6-225 (e)(3) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the defendant-appellant contends (1) the evidence preponderates against the trial court's award of permanent partial disability benefits to the claimant based on a 70% vocational disability to his left lower extremity, and (2) the trial court erred by allowing a chiropractor to offer testimony concerning claimant's injuries when the chiropractor was not licensed or authorized by the State of Tennessee under Tenn.

Code Ann. §63-4-101 to treat such injuries.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. §50-6-225 (e)(2).

As discussed below, the panel has concluded that the judgment of the trial court should be affirmed.

The appellee first asserts that the evidence preponderates against the trial court's award of permanent partial disability benefits to the claimant of seventy percent (70%) vocational impairment to the left lower extremity.

The employee or claimant, Reed, was 41 years old at the time of the trial. He is a high school graduate and had a diverse work history from the time he was in high school until he suffered a compensable work related injury on August 9, 1995.

During this period of time, he had approximately ten different jobs, (farm work, tree care, battery sales, Kroger warehouse, landscaping, sales and delivery of snack foods, selling labels, Orkin Plantscaping, insurance salesman, and brick layer's helper. Most of the jobs claimant had required lifting, squatting, climbing, and generally doing physical labor.

In July of 1995, claimant began working for Long Foundation Building where he was employed at the time of his injury that is the subject of this case. He was employed as a laborer.

On this job, he was required to set up a drill rig, to set pumps, pipes, and steel, so concrete could be poured. On August 9, 1995, claimant fell into a caisson and sustained a compensable work-related injury. He sustained a severe comminuted injury to his left proximal femur. There were no notice issues, and claimant's compensation rate was stipulated.

Immediately after the injury, the claimant was treated by a physician in Cullman, Alabama where surgery was performed. He began seeing Dr. Gautsch on August 17, 1995. Claimant underwent physical therapy and had screws removed from his knee in December of 1995. In February, 1996, another surgery was performed where the rod was replaced; in May of 1996 surgery was performed on his knee; and in April, 1997, some screws were removed from his knee.

Dr. Gautsch stated that claimant has about a three and a half centimeter of atrophy in the left quadriceps compared to the right quadriceps. Dr. Gautsch assigned 13% impairment to claimant's left lower extremity.

In August, 1996, claimant asked to go back to work at Long Foundation doing light duty and was told that there was no work for him at that time.

After being released for regular duty by Dr. Gautsch in September, 1996, claimant worked for Long Foundation for one week doing the same kind of work that he had done before his injury. After one week of his usual work, claimant described himself as "bruised up" and "beat up". His legs bothered him climbing upon the "pour barrels", and he had to push up with his stomach and not with his leg. His leg swelled in the femur area.

When called for regular work the next week, claimant asked for light duty and was told that there was no light duty available. Claimant felt that he was not physically able to do the work that he had been assigned to the week before. Claimant did not work for Long Foundation again.

After thoroughly considering the entire record in this case, we find that the evidence does not preponderate against the trial court's findings that the claimant suffered a seventy percent (70%) vocational impairment to the left lower extremity.

The appellee further asserts that the trial court erred by allowing Dr. Chris Carley, a chiropractor, to offer expert testimony at the trial concerning the permanent impairment suffered by the claimant as the result of a broken femur and torn cruciate ligament when the chiropractor was not licensed by the State of Tennessee under Tenn. Code Ann. §3-4-10 to treat such injuries.

Under both Rule, 104(a) (Tennessee Rules of Evidence) and common law, the trial court determines whether a witness qualifies as an expert. The judge is given broad discretion in making this determination. Tennessee Law of Evidence §702.4 p. 464. Blaylock v. Claiborne, S.W.2d 363,366 (Tenn. Ct. App.

1989).

At the time the chiropractor testified, the trial court was well aware of the restrictions on chiropractors under Tenn. Code Ann. §63-4-101. He was also aware that the claimant was examined by the chiropractor for about 45 minutes to an hour, and the real purpose of the claimant going to the chiropractor was seeking help with his impairment rating in his worker's compensation claim.

This court must presume that the trial judge gave such weight to the chiropractor's testimony as it was entitled to.

Moreover, the trial court had sufficient evidence to justify a finding of 70% vocational disability to claimant's left lower extremity, absent the testimony of the chiropractor.

For the above reasons, we find that the evidence does not preponderate against the trial court's findings on either of the issues raised on this appeal.

Therefore, the Judgment of the trial court is affirmed.

Costs on appeal are taxed to the defendant/appellant.

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James L. Weatherford, Senior Judge

CONCUR:

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Adolpho A. Birch, Jr., Associate Justice

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Joe C. Loser, Jr., Special Judge